## APPENDIX A

### Order of the Fourth Circuit Court

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 75-1621

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UNITED STATES OF AMERICA

v.

JEFFREY R. MACDONALD

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### ORDER

Upon consideration of the United States' motion to dismiss this appeal from an order denying a motion filed by Jeffrey R. MacDonald to transfer this case to the United States District Court for the Central District of California, and the response of Jeffrey R. MacDonald;

It appearing to the court that the order denying transfer is not appealable, *United States* v. *Brown,* 301 F.2d 664 (4th Cir. 1962);

Whereupon, with the concurrence of Judge Craven and Judge Russell, it is ADJUDGED and ORDERED that the appeal is dismissed.

/s/ JOHN D. BUTZE, JR.
John D. Butze, Jr.
*United States Circuit Judge*

FILED
Jul 1 1975
WILLIAM K. SLATE, II
*Clerk*

A True Copy, Teste:
WILLIAM K. SLATE, II, *Clerk*

By /s/ DIANE BURK
Diane Burk
*Deputy Clerk*

**APPENDIX B**

**Order on Motion to Transfer**

[Filed May 30, 1975]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

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No. 75-26-CR-3

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UNITED STATES OF AMERICA, *Plaintiff*

v.

JEFFREY R. MACDONALD, *Defendant*

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## ORDER ON MOTION FOR TRANSFER

The defendant, Jeffrey R. MacDonald, indicted in this court on three counts of first-degree murder, has filed ten pre-trial motions under Rule 12, F.R.Crim.P. The motions have been extensively briefed and argued before the court over a period of five days, and now ready for ruling is defendant's primary motion under F.R.Crim.P., Rule 21, for transfer of the case to the Central District of California for trial. The motion will be denied.

### I.

### TRANSFER PURSUANT TO RULE 21(b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

Defendant first moves that the case be transferred to the Central District of California for the convenience of the

parties and witnesses in the interest of justice under the provisions of Rule 21(b), F.R. Crim.P., which reads as follows:

> "For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to him or any one or more of the counts thereof to another district."

The factors to be considered by the court in exercising its discretion on a motion to transfer under F.R. Crim.P. 21(b) have been listed in *Platt* v. *Minnesota Mining & Manufacturing Company*, 376 U.S. 240, 243-244 (1964), as follows:

1. Location of defendant.
2. Location of witnesses.
3. Location of events likely to be in issue.
4. Location of documents and records likely to be involved.
5. Disruption of defendant's business unless the case is transferred.
6. Expense to the parties.
7. Location of counsel.
8. Relative accessibility of place of trial.
9. Docket condition of each district or division involved; and
10. Any other special elements which might affect the transfer.

The murders with which defendant is charged occurred on February 17, 1970, at Fort Bragg, North Carolina, which is in this judicial district. At that time the defendant was serving in the Army as a medical doctor and was stationed at Fort Bragg. His permanent home was on the east coast, but about six months after his discharge from the Army in December of 1970 he moved to California, and for the last three and one-half years has maintained his residence at

Huntingdon Beach, California. He is employed at St. Mary's Hospital in Long Beach, California, as Director of the Department of Emergency Medical Services. In this position he performs certain administrative duties which account for just over half of his annual income of $60,000, the remainder of his income being for professional medical services personally rendered by him.

The defendant has alleged that if the cause is removed to the Central District of California, "he will be able to work continuously at his present position, including evenings and weekends when made necessary by in-court proceedings during the daytime," and the court is satisfied that the defendant could in fact continue to perform some of the services incident to his present employment, particularly in connection with his administrative duties. It is difficult to see how the defendant could practice medicine to any appreciable extent while engaged in the trial of the very serious charges which have been brought against him. The court has therefore concluded that a trial in this district would be more expensive to defendant in terms of lost income than would be the case if the trial were to be held in Los Angeles. It may also be assumed that the defendant's personal expenses in attending a trial in this district will be much greater than would be the case if the trial were were held near his home in California.

A consideration of the factors other than the personal financial hardship of the defendant has led the court to conclude, however, that the convenience of the parties and witnesses and the ends of justice do not require that the motion be allowed. A substantial number of the possible witnesses for the government and the defendant are located in the Eastern District of North Carolina, and there has been no showing that non-resident fact witnesses for either party live in or nearer to California than to North Carolina. The defendant proposes to call a number of character witnesses who reside in California and who have

known defendant since he moved to that state some three and one-half years ago, but it would seem that defendant's character witnesses in position to offer more pertinent testimony would be those who reside on the east coast and who knew the defendant prior to the date of the crime. The government has indicated it will consider stipulating the testimony of defendant's California character witnesses, and perhaps the matter can be handled by deposition.

The murders occurred at Fort Bragg which is in this district, and it is the court's understanding that the documents and records likely to be involved in the case are located in the office of the United States Attorney at Raleigh or in the Department of Justice at Washington, District of Columbia. The defendant has made no showing with respect to the location of any documents and records likely to be involved in the defense of the case.

Chief counsel for the defendant since the first charges were brought against him in 1970 by the military has been Bernard L. Segal, Esq., who at the time of the crime was a resident of Pennsylvania and a member of the bar of that state but who now resides in San Francisco, California, where he teaches in the School of Law at Golden Gate University. Although he apparently practices law in San Francisco, Mr. Segal is not a member of the California bar, and for this reason he would be precluded by Local Rule 1.3 of the District Court for the Central District of California from appearing as counsel for the defendant if the case should be removed to that court for trial.[1]

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[1] The rule provides for *pro hac vice* representation in a case by an attorney not otherwise eligible for admission who is a member in good standing of the bar of another state, but "unless authorized by the constitution or an act of Congress, an attorney is not eligible to practice pursuant to this paragraph if any one or more of the following apply to him: (i) he resides in California; or (ii) he is regularly employed in California; or (iii) he is regularly engaged in business, professional or other activities in California." Each of these condtions appears to apply to Mr. Segal.

Defendant's other retained counsel at this time is Michael J. Malley, Esq., who is a member of a Washington, District of Columbia, law firm. Obviously it will be more convenient for Mr. Malley to attend court in Raleigh which is not more than an hour away from Washington by air than it would be for him to attend court in Los Angeles.

While this is a Fayetteville Division case, the trial will be held at Raleigh which is connected by all forms of transportation with all of the principal cites in the United States including direct air connections to Los Angeles. It thus appears probable that Raleigh is more accessible to the parties and witnesses in the case than would be Los Angeles.

The condition of the docket of this court at this time is reasonably current, and the trial of this case can be commenced here within the next sixty days. Figures provided by the Administrative Office of the United States Courts indicate that the per-judge caseload in the Central District of California is considerably higher than the present per-judge caseload in this district.[2]

The court has considered several "other special elements" advanced by defendant as reasons for the proposed transfer, but these have not been deemed of sufficient merit to outweigh the reasons the government has advanced for retaining the case in this district. For instance, counsel for defendant predicts that the trial of the action may last from four to six months. In view of the fact that a full-blown hearing under Article 32 of the Uniform Code of Military Justice involving witnesses for the government

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[2] As a matter of courtesy the court communicated with Judge Irving Hill of the Central District of California to ascertain the present status of the docket there. He described it as "deplorable," and stated that if the case were transferred to that district and were not because of exigent circumstances accorded some unusual priority, it would be many months if not a year or more before it could be reached for trial.

and defendant required only four weeks of testimony, the court is of opinion that defendant's estimate of the trial time is not realistic. Defendant further contends that he will retain certain expert witnesses, "criminologists," to testify on his behalf and that such witnesses are more readily available on the west coast than in this area. It does not appear that he has retained any such witnesses, however, and there has been no showing that such experts, if needed by defendant, are not available in this area. Defendant alleges that it will be necessary for him and his attorneys to rent office space and furniture, purchase office supplies and equipment, lease telephones and have the assistance of perhaps as many as eight lawyers and law researchers, several investigators and several stenographers. Defendant has not yet retained local counsel to appear with his out-of-state attorneys, as it will be necessary under the Local Rules for him to do, but the court perceives no reason why the facilities of such local counsel when retained will not suffice for defendant's purposes.[3]

## II.

### Transfer Pursuant to Rule 21(a) of the Federal Rules of Criminal Procedure

As a second ground for his motion to transfer it is alleged "that the defendant would suffer prejudice in the Eastern District of North Carolina in that a fair and impartial trial could not be obtained." This motion is made pursuant to Rule 21(a) which reads as follows:

> "The court upon motion of the defendant shall transfer the proceeding as to him to another district whether or not such district is specified in the defendant's motion if the court is satisfied that there exists in the dis-

[3] This court routinely makes available to counsel in protracted cases ample space in the courthouse for conferences and, if needed, secretarial space. A telephone may be installed at the party's expense, and the court's library, of course, is available to counsel.

trict where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial at any place fixed by law for holding court in that district."

The basis for defendant's motion is alleged prejudicial pre-trial publicity. The defendant has introduced clippings of numerous newspaper stories which appeared following the crime in February of 1970 and particularly during the course of the Article 32 proceedings which followed in the spring and summer of that year. The court has reviewed this material, and while it must be conceded that the crime was of a sensational character, the news stories for the most part appear to have been factual in nature and not designed to incite prejudice against the defendant. A substantial part of the publicity appears to have emanated from defendant himself and his attorney in numerous interviews granted by them to the news media. While the court has not seen or read all of this material, it seems safe to assume that it did not include inculpatory disclosures.[4]

More recently the publicity in this district has been the result of the grand jury proceedings which began in August of 1974. The defendant came here voluntarily and testified before the grand jury on two occasions, and on each occasion he submitted to interviews with the press and he and his attorney were regularly seen on newscasts over the

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[4] The court is informed that on at least one occasion the defendant appeared on a national television program, and on the day before the hearings on defendant's motions began in this court there appeared in the Los Angeles Times a feature article of fifty-six column inches in length together with a large picture of the defendant. The material for this article was obviously furnished by the defendant, and in connection with the extensive news coverage of the bail reduction proceedings which were held in Los Angeles in February of 1975 it would seem that the publicity the case is receiving in California approaches that which it is receiving in this district.

local television stations. Following the court's admonition to counsel for the government and the defendant the press interviews appear to have diminished if not ceased altogether since the hearings on defendant's motions got underway, and while these hearings have been regularly reported in all of the news media, the reports of which the court is aware have consisted only of factual reporting of proceedings which occurred in open court, and it is not perceived that the news stories growing out of the grand jury proceedings or the hearings in this court have prejudiced the defendant's right to a fair and impartial trial in this district.

In sum, the court is not satisfied that there exists in the district so great a prejudice against the defendant that he cannot obtain a fair and impartial trial, and in any event, it would be inappropriate to grant defendant's motion for transfer prior to the selection of a jury for the trial of the case. *United States* v. *Abbott Laboratories,* 505 F.2d 565 (4th Cir. 1974); *Wansley* v. *Slayton,* 487 F.2d 90 (4th Cir. Cir. 1973).

Accordingly, it is now

ORDERED:

1. That the motions of the defendant for transfer of the case to the United States District Court for the Central District of California for trial are denied;

2. That this case be transferred from the Fayetteville Division of this court to the Raleigh Division for trial; and

3. That subject to the rulings of the court to be made in the near future on defendant's remaining motions the case in set for trial in Courtroom No. 1, Seventh Floor, Federal Building, 310 New Bern Avenue, Raleigh, North Carolina, at 10:00 a.m. on Monday, July 14, 1975.

/s/ F. T. DUPREE, JR.
F. T. Dupree, Jr.
*United States District Judge*

May 30, 1975.

## APPENDIX C

### Financial Statement of Petitioner

JEFFREY R. MacDONALD

BALANCE SHEET

APRIL 30, 1975

ASSETS

| | |
|---|---|
| Cash | $ 10,000.00 |
| Automobile | 8,000.00 |
| Boat | 18,000.00 |
| Residence | 75,000.00 |
| Furniture and Personal Property | 10,000.00 |
| Pension Profit Sharing Plan | 7,000.00 |
| Listed Stocks | 3,300.00 |
| Land | 1,000.00 |
| TOTAL ASSETS | $132,300.00 |

LIABILITIES

| | |
|---|---|
| Accounts Payable | $ 2,500.00 |
| Note Payable, Bank of America, Secured by Boat | 17,800.00 |
| Note Payable, American City Bank, Secured by Automobile | 1,200.00 |
| Note Payable, California Federal Savings, Secured by Residence | 28,000.00 |
| Note Payable, Raymond Baker, Secured by Residence | 10,000.00 |
| Note Payable, Northwestern Medical School | 6,500.00 |
| Loan Payable, Diana Miller Decorator, Inc. | 2,000.00 |
| Legal Fees (Various) | 18,300.00 |
| TOTAL LIABILITIES | $ 86,300.00 |
| EXCESS OF ASSETS OVER LIABILITIES | $ 36,000.00 |

JEFFREY R. MacDONALD

PERSONAL INCOME & EXPENSES

JANUARY 1, 1974 THROUGH DECEMBER 31, 1974

INCOME

| | |
|---|---|
| Salary | $60,000.00 |

EXPENDITURES

| | | |
|---|---|---|
| House Payment (Includes Taxes & Insurance) | $ 5,300.00 | |
| Boat Payment | 3,400.00 | |
| Auto Payment | 1,200.00 | |
| Income Taxes | 10,800.00 | |
| Loan to Northwestern University | 900.00 | |
| Insurance | 700.00 | |
| Non Reimbursed Business Expenses | 5,000.00 | |
| Medical | 200.00 | |
| Living Expense | 25,000.00 | |
| Normal Legal & Accounting | $ 4,000.00 | $56,500.00 |
| Excess | | $ 3,500.00 |

## APPENDIX D

### Comparative Cost of Trial Statement of Petitioner

JEFFREY R. MacDONALD
COMPARATIVE COST OF TRIAL
L.A. vs N.C.

1975

| | North Carolina | Los Angeles | Savings in Los Angeles |
|---|---|---|---|
| INCOME | $ 30,000.00 | $60,000.00 | $30,000.00 |
| FEES | | | |
| Legal | 40,000.00 | 35,000.00 | 5,000.00 |
| Private Investigator | 4,000.00 | 4,000.00 | — |
| Ten Expert Witnesses | 3,000.00 | 3,000.00 | — |
| Local Counsel | 8,000.00 | — | 8,000.00 |
| Typist | 1,000.00 | — | 1,000.00 |
| TRAVEL COSTS | | | |
| Defendant | 800.00 | — | 800.00 |
| Mother of Defendant | 1,200.00 | — | 1,200.00 |
| Attorneys—Segal (6) | 2,400.00 | 300.00 | 2,100.00 |
| —Malley | 400.00 | 800.00 | (400.00) |
| —2 Law Clerks | 2,400.00 | 300.00 | 2,100.00 |
| Private Investigator (1) | 1,000.00 | 2,000.00 | (1,000.00) |
| Expert Witnesses (10) | 4,000.00 | 200.00 | 3,800.00 |
| Character Witness (15) | 6,000.00 | 1,200.00 | 4,800.00 |
| Fact Witness (20) | 8,000.00 | 8,000.00 | — |
| LIVING EXPENSES (Additional) | | | |
| Defendant | 4,000.00 | — | 4,000.00 |
| Mother of Defendant | 4,000.00 | — | 4,000.00 |
| Attorney—Segal | 3,500.00 | 3,500.00 | — |
| Attorney—Malley | 3,500.00 | 500.00 | 3,000.00 |
| Law Clerks (2) | 6,000.00 | 3,000.00 | 3,000.00 |
| Private Investigator | 3,500.00 | 3,500.00 | — |
| Expert Witnesses | 1,200.00 | 300.00 | 900.00 |
| Character Witnesses | 1,500.00 | 300.00 | 1,200.00 |
| Fact Witnesses | 2,400.00 | 2,400.00 | — |
| MISCELLANEOUS | | | |
| Auto Rental (2) | 2,500.00 | — | 2,500.00 |
| Telephone | 500.00 | 500.00 | — |
| Paper and Xerox | 2,000.00 | 1,000.00 | 1,000.00 |
| Court Reporter | 4,000.00 | 4,000.00 | — |
| | $120,800.00 | $73,800.00 | $47,000.00 |

## APPENDIX E

**Affidavit of Petitioner Sur Costs Incurred in Connection With Hearings on Pre-Trial Motions**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

No. 75-26-CR. 3

UNITED STATES OF AMERICA

vs.

JEFFREY R. MACDONALD

AFFIDAVIT SUR COSTS INCURRED BY THE DEFENDANT IN CONNECTION WITH HEARINGS ON PRE-TRIAL MOTIONS IN SUPPORT OF DEFENDANT'S MOTION FOR TRANSFER
PURSUANT TO RULE 21(b) FED R. CRIM. PROC.

COST OF: 4 (four) days ..... DEFENDANT
4 (four) days ..... Mr. Segal
2 (two) days ..... Mr. Malley
5 (five) days ..... Ms. Simmons
3 (three) days ..... Mrs. Escott

I. FLIGHTS:

$ 380.00 ..... Defendant
$ 380.00 ..... Mr. Segal
$ 380.00 ..... Ms. Simmons
$ 75.00 ..... Mr. Malley
$ 40.00 ..... Mrs. Escott

TOTAL: $1,255.00

II. MEALS: ..... All of the above persons
TOTAL: $ 200.00

III. Rooms and Telephone ..... All of the above persons
Total: $ 325.00

IV. Car Rental ..... All of the above persons
Total: $ 100.00

V. Legal Fees:

$1,500.00 ... Mr. Segal, Chief Defense Counsel
$ 500.00 ..... Mr. Malley, Assistant Counsel
$ 500.00 ..... Mrs. Escott, Local Counsel

Total: $2,500.00

VI. Income Lost by Defendant:
Total: $1,000.00

TOTALS

| In North Carolina | | If Held in Los Angeles | |
|---|---|---|---|
| I. | $1,255.00 | I. | $ 435.00 |
| II. | 200.00 | II. | 200.00 |
| III. | 325.00 | III. | 25.00 |
| IV. | 100.00 | IV. | — |
| V. | 2,500.00 | V. | 2,000.00 |
| V. | 1,000.00 | VI. | — |
| | $5,380.00 | | $2,660.00 |

Differences In:
Expenses/Services for Less Than One Week—$2,750.00
(This Figure Does Not Include the Cost of Preparation)

I declare under penalty of perjury that the above is true and correct.

Dated: 5/7/75

At: Federal Court House Bldg., Raleigh, N.C.

/s/ Jeffrey R. MacDonald
Jeffrey R. MacDonald, Defendant
Crim. Case No. 75-26-Cr. 3